IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.9226 OF 2004

Ganpat S. Phalle)..Petitioner

Versus

Mangesh G. Maratkar)..Respondent

Mr.S.V. Pitre for the Petitioner.

Mr.S.G. Page with Mr.S.R. Page for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 17TH OCTOBER 2005

P.C.:

. This Petition challenges concurrent findings of fact of both the Courts below. The decree has been passed on three grounds, namely, (i) bona fide requirement of the suit premises; (ii) permanent construction without the permission of the landlord and (iii) causing nuisance. Both the Courts below have found that the suit premises where a cattle shed is being run is causing nuisance not only to the Plaintiff but also to the persons residing in the neighbouring areas. Both the Courts below have found that the Pune Municipal Corporation had issued notices to the Petitioner because of the nuisance which he created and in view of the illegal construction that he had erected in the suit premises. According to the Petitioner, the suit premises are a cattle shed and a trough (Gavan) is a necessary requirement for a cattle shed and construction of the

same would not amount to permanent alteration of the suit premises as contemplated under Section 13(1)(b). The trial Court as well as the Appellate Court have found that this trough was constructed only after the suit premises were let to the Petitioner. The tenancy agreement does not mention the trough but only the cattle shed and therefore it has been held that the construction of the same without the permission of the landlord as well as the Pune Municipal Corporation amounts to an illegal permanent structure being erected on the suit premises.

2. As regards bona fide requirement, the Plaintiff had established that his Uncle Balasaheb Maratkar requires the suit premises to run a printing press. His Uncle had returned from Indonesia as the situation in that country was not conducive for Indians who were residing there. This Balasaheb Maratkar had the qualification of a B.Tech. degree and, therefore, he needed the suit premises to run a printing press. A contention is raised that the Plaintiff has alternate accommodation in Deccan Gymkhana area which he has sold. A suggestion put to the witness in his cross-examination has resulted in him deposing that those premises were residential premises. I see no reason to interfere with the findings of both the Courts below. Writ Petition rejected.

3. The decree not to be executed for a period of eights weeks from today.